COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts	D.T.E. 01-20

CONDITIONAL MOTION OF AT&T TO STRIKE VERIZON'S RECURRING COST MODEL

Introduction.

AT&T Communications of New England, Inc. ("AT&T") respectfully urges the Department to strike Verizon's recurring cost model should the evidentiary standard set forth in the Department's August 31, 2001 Interlocutory Order be upheld. Simultaneously with the filing of this motion, AT&T is filing a Motion for Reconsideration in which it asks the Department to reconsider its new evidentiary requirement that parties "spread upon the record" all data supporting their proposed cost models. Should the Motion for Reconsideration be denied, however, AT&T moves that the Department strike Verizon's cost model on the ground that Verizon has not met, and by its own admission is unable to meet, the new evidentiary burden imposed by the August 31 Order. If the Department does not modify this stringent new evidentiary requirement, it must apply the requirement with the same rigor to Verizon's cost study as it would to any submission by AT&T. Evenhanded application of that standard would require rejection of Verizon's cost study.

Argument.

I. THE DEPARTMENT'S AUGUST 31, 2001 INTERLOCUTORY ORDER IMPOSES A NEW BURDEN UPON PARTIES TO INTRODUCE INTO EVIDENCE ALL UNDERLYING DATA SUPPORTING THEIR COST MODELS.

The Department's August 31, 2001 order first discusses a discovery standard, stating that a party proposing a cost model for determining UNE rates in Massachusetts has a burden "to support its case and ensure that the underlying data and assumptions of the model are available for review." August 31 Order at 13-15. The Department stated that a "[cost] model and all underlying data, formulae, computations and software associated with the model must be available to all interested parties for review and comment." *Id.* at 13. Such information must be made available in order to provide parties with a "meaningful opportunity to review and analyze" a cost model, the data underlying the model, and the method by which the data was compiled and derived. *Id.* at 16.

The Department went on, however, to adopt a stringent, and entirely new, evidentiary standard, requiring parties to "spread upon the record" all data relevant to their respective cost models. *Id.* at 18. If not revised, the August 31, 2001 Order holds that making such data available for viewing and analysis by other parties is not sufficient, and that all data underlying any cost model must be physically produced and introduced into the evidentiary record. *See id.* at 19. A party proposing a cost model for determining UNE rates, therefore, must introduce into evidence and "spread upon the record" all data supporting the proposed model. *See id.* at 18. As stated in AT&T's companion Motion for Reconsideration, this finding represents a new evidentiary burden that the Department has not imposed in the prior UNE cost case.

II. VERIZON IS UNABLE TO SATISFY THE DEPARTMENT'S NEW EVIDENTIARY BURDEN.

Verizon has not complied with this stringent new evidentiary burden, and its discovery responses make clear that it is unable to do so with respect to numerous aspects of its recurring cost model.

A. Verizon is Unable to Provide Key Information Upon Which its Loop Cost Model is Based.

Verizon is unable to produce critical data underlying its loop cost model. The loop length data that Verizon has failed to submit for the record is directly analogous to the highly proprietary geocoded data set that AT&T has offered to make available via TNS, but that the Department has instead ordered AT&T to put into the record.

The Verizon recurring cost panel's direct testimony makes clear that it utilized a Loop Cost Analysis Model ("LCAM") to "develop the investments and costs associated with the local loop. . ." Verizon Direct Panel Testimony at 89 (filed May 8, 2001). The testimony also makes clear that the plant characteristics underlying the LCAM are "derive[d] . . . from a survey of feeder route data conducted by Verizon MA's engineers." *Id.* These plant characteristics derived from the survey of selected feeder runs are the sole basis for Verizon's estimation of average "feeder, sub-feeder and distribution length, structure and size" for the Carrier Serving Areas modeled by Verizon. *Id.* at 91. Thus, Verizon's entire loop cost model relies upon these engineering surveys. Verizon has failed to provide the documentation and data purportedly summarized in its engineering surveys, and for that matter has failed to provide any engineering surveys. All that it includes in its submissions on the record are loop length numbers that it claims were developed in these random surveys.

Verizon's discovery responses make clear that it is not able to "spread upon the record" the data from which its loop length assumptions are derived. AT&T has repeatedly requested access to the data relied upon by the engineers conducting Verizon's survey of feeder routes. AT&T first requested access in discovery request ATT-VZ 14-32. After Verizon's objection to this request on burdensomeness grounds, AT&T followed up by letter, asking Verizon to provide at least some of the relevant documentation. Once again, Verizon refused to provide any of the inputs purportedly used in its survey of feeder routes. In a letter dated July 10, 2001, Verizon stated that:

> As you indicated in your letter, the feeder lengths used in the cost study was based on a survey of feeder loop data conducted by Verizon MA engineers. Data that would have been reviewed and/or served as the basis of the survey responses by Verizon MA engineers, include plats, maps, diagrams, etc. of Verizon MA's outside plant. To produce such documents would require Verizon MA to go back to each of the engineers and have them reconstruct their review and knowledge of the network and identify scores of documents that may have been considered by them in responding to the survey. This undertaking would be enormous and any probative value of the results would be overwhelmed by the burden it would place on Verizon MA to respond.

Verizon's responses to repeated discovery requests make clear that the Company is unable to provide access to any of the information and documentation purportedly used in developing the inputs upon which Verizon's loop length and cost estimates are based. Thus, Verizon's loop cost model does not and cannot comport with the new evidentiary standard announced in the Department's order of August 31, 2001.

B. Verizon is Unable to Introduce Relevant Data Upon Which its Switching and Digital Circuit Models are Based.

Verizon is also unable to produce key data underlying the Engineer, Furnish & Install ("EF&I") and power factors used within its digital switching and digital circuit cost models. These factors are critical to Verizon's inflated proposed costs and Verizon's inability to produce any of the data supporting them creates a serious evidentiary void.

Verizon has stated that the EF&I factor was:

> developed on the basis of the data contained within the Company's Detailed Continuing Property Record ('DCPR'). Specifically, the total installed investment for hardwired equipment installed in calendar year 1998 was added to the plug-in equipment installed in calendar year 1998. (This was the latest year for which data were available at the time that the studies were done.) The sum of the installed investments was then divided by the sum of the material-only investments of the same equipment, also derived from DCPR. This yielded the final EF&I factor, which represents the relationship of TCI investment to materials investment for equipment in the future based on current relationships.

Verizon's Direct Panel Testimony at 29.

Verizon has not provided any of this DCPR data for the record, and its discovery responses make clear that it is incapable of doing so. AT&T made several discovery requests for information concerning the DCPR in an attempt to test the extent to which Verizon's historic, embedded costs deviated from forward-looking costs. *See* ATT-VZ 14-10; ATT-VZ 14-11. Verizon completely refused to provide any information concerning the DCPR, stating that the "requested data is not readily available" and that producing it would require a "burdensome special study." *Id.* Verizon's inability to provide such data makes an effective analysis of the EF&I factor and Verizon's digital switching and digital circuit cost models virtually impossible, and means that Verizon's cost study does not and cannot comply with the new evidentiary standard announced in the August 31, 2000 Order.

Verizon has similarly failed to submit for the record the DCPR data underlying the power factor used in its digital switching and digital circuit cost studies. Verizon described the origin of the power factor in its Direct Panel Testimony:

> The factors were developed on the basis of the data contained within the DCPR database. The installed investment of power equipment placed in 1998 was identified by the type of equipment it is supporting. Next, the total installed investment for hardwired central office equipment installed in calendar year 1998 was added to the central office plug-in equipment installed in calendar year 1998. The sum of the installed central office investments was then divided into the installed investment of power equipment to yield the relevant power factors.

Once again, AT&T made several discovery requests concerning the DCPR data underlying the power factor used to support the cost model. AT&T's requests were again flatly denied by Verizon. *See* ATT-VZ 14-14; ATT-VZ 14-15. Verizon stated that such data was "not readily available" and would require a "burdensome special study" to develop.

Thus, Verizon's switch cost model is based upon data that Verizon has not and will not offer into evidence. Verizon's discovery responses make clear that the Company is incapable of proffering such evidence. For these portions of its cost study, Verizon is unable to satisfy the evidentiary standard set forth in the Department's August 31 order.

C. Verizon is Unable to Provide Data Underlying its Proposed RTU Fees for Digital Switching

Verizon is also unable to produce critical evidence underlying its proposed Right to Use or "RTU" fees for digital switching. Verizon's claimed RTU cost for local switching is based on a factor derived from data regarding total regional RTU expenditures for 1999 and 2000, and forecasted regional RTU expenditures for 2001 and 2002. *See* Verizon's Recurring Cost Study, Workpaper Part C-2, Section 6, Pages 1-2, Line 9 (RTU switch costs, using a "Right-to-Use Factor"), and Workpaper Part G-9, Page 1 of 3, Line 1 (RTU factor study).

But Verizon has not "spread upon the record" the data that underlie these summary annual totals. This is a key omission, because without the underlying data the Department and the parties are unable to determine whether this historic data includes unusual one-time RTU expenses, or for other reasons does not properly represent forward-looking, TELRIC-compliant RTU costs. *See* Revised Rebuttal Testimony of Catherine E. Pitts, at 37. The possibility of unusual one-time expenditures is very real, given that Verizon's RTU expenses in 1999 are more than twice the 2000 level, or the amounts forecast for 2001 or 2002. *See* Verizon's Recurring Cost Study, Workpaper Part G-9, Page 1 of 3, Line 1.

Nor has Verizon provided any of the data or documentation that underlie its forecasts for 2001 and 2002 total regional RTU expenditures. To the contrary, it has made clear in its discovery responses that it is unable to do so. In discovery request ATT-VZ 12-2, AT&T asked Verizon to:

> Please provide an explanation of the process of how the forecasted RTU fees for digital switching were developed, including the Verizon organizations responsible for developing the forecast and the organizations which provided input to the forecast. Please provide the details of the quantifications of the forecast, including all documentation and calculations used by the organizations providing input and the organization responsible for developing the forecast.

Verizon refused, however, to provide any of the data underlying its forecast. In its response to ATT-VZ 12-2, the Company stated:

> RTU fees (software) requirements are based upon site-level deployment plans as developed by Network Engineering and Network Planning. The deployment plans ensure software released for the switches within all states are kept current in accordance with switch vendor support guidelines, and in support of new hardware and feature activation. These deployment plans are primarily based upon Business Plans for the Enterprise, Retail, & Wholesale organizations, Regulatory orders, Equipment Capacity Exhaust forecasts, and Vendor Generic Support Guidelines. Multiple organizations beyond Network Engineering and Network Planning have input to this process. Verizon MA objects to producing 'all documentation and calculations used by these organizations' because it would be overly burdensome to try to compile such data.

Thus, Verizon is unable to spread upon the record any of the data relied upon by "multiple organizations" in developing the RTU forecasts that underlie its switch cost study. Access to such data is critical to an effective analysis of the proposed RTU fees. Verizon's modeled RTU fees thus fail to meet the new evidentiary standard established by the Department's August 31 Order.

III. VERIZON'S COST MODEL MUST BE STRICKEN IF THE DEPARTMENT'S NEW EVIDENTIARY STANDARD IS UPHELD.

Should the new evidentiary burden created by the Department's August 31 Order be upheld, Verizon's recurring cost model must be stricken. Verizon has not met, and has made clear that it cannot meet, the new burden. It has not offered and has stated that it is incapable of offering critical data underlying its cost model into evidence. Verizon, therefore, has failed to meet the Department's requirement that a party proposing a cost model "support its case and ensure that the underlying data and assumptions of the model are available for review." *See* August 31 Order at 13.

Verizon is unable to produce as record evidence any information concerning the survey of feeder route data upon which the Company's loop cost model heavily relies. Verizon has also failed to spread upon the record any of the DCPR data underlying its EF&I and power factors, information which is crucial to an accurate and effective analysis of the Company's digital switching and digital circuit cost models. Furthermore, Verizon has demonstrated that it is unable to provide data underlying its proposed RTU fees.

As Verizon is incapable of meeting the Department's evidentiary standard that all data relevant to a proposed cost study be "spread upon the record", its cost study is not supported by sufficient evidence and must be stricken.

Conclusion.

Should the new evidentiary standard imposed by the Department's August 31 Order be upheld, AT&T respectfully requests that the Department strike Verizon's recurring cost model on the ground that Verizon's failure to supply all relevant input data means that it has not presented and cannot present an adequate *prima facie* case in support of that model.

Respectfully submitted,

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